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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,044	03/22/2004	David J. Thomsen	333628003US1	9996
25996 7590 05/02/2008 PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247				
EXAMINER				
DAYE, CHELSEA L				
ART UNIT		PAPER NUMBER		
2161				
MAIL DATE		DELIVERY MODE		
05/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/806,044

**Applicant(s)**

THOMSEN, DAVID J.

**Examiner**

CHELCIE DAYE

**Art Unit**

2161

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 10-12 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 10-12 and 30-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is issued in response to applicant's RCE filed February 19, 2008.
2. Claims 3,10-12, and 30-35 are presented. No claims added and claims 1-2,4-9, and 13-29 remain cancelled.
3. Claims 3,10-12, and 30-35 are pending.
4. Applicant's arguments filed February 19, 2008, have been fully considered but they are not persuasive.

***Continued Examination Under 37 CFR 1.114***

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 19, 2008 has been entered.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**7. Claims 3,10-12, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pullen (US Patent Application No. 20040064390) filed September 26, 2002, in view of Kauderer (US Patent Application No. 20040172311) filed February 23, 2003, and further in view of “O\*NET 98 Data Dictionary”, Release 1.0, referred to hereinafter as ‘ONET’.**

Regarding Claim 3, Pullen discloses a method for providing and collecting information associated with a collection of occupational information, the method comprising:

providing a publicly available web site for users of occupational information ([0030], lines 1-13, Pullen)<sup>1</sup>, wherein the publicly available web site allows the users of occupational information to access information associated with the collection of occupational information ([0031], Pullen) and to contribute information used to update the collection of occupational information ([0033], Pullen)<sup>2</sup>;

providing access to information recently contributed via the publicly available web site ([0040], Pullen), wherein the recently contributed information includes information contributed using questionnaire forms accessible from the publicly available web site ([0034], Pullen)<sup>3</sup>. While it is inherently clear that Pullen discloses the steps taken to update occupational information, which therefore warrants the step of updating, the actual step of updating is not explicitly mentioned. As such, Kauderer discloses

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<sup>1</sup> Examiner Notes: The occupational information is represented by wages and benefits information for a company.

<sup>2</sup> Examiner Notes: The option of submitting data into a survey corresponds to the contributed information. Also, the “Sea Sand Resort” is the selected information to be updated.

updating the collection of occupational information based on receiving a submission of a questionnaire form accessed from the publicly available web site and at least partially completed, wherein the questionnaire form specifies one or more data measures associated with an occupation ([0029], lines 22-24 and [0075], Kauderer)<sup>4</sup>. Pullen and Kauderer are analogous art because they are from the same field of endeavor of web-based information services for companies. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Kauderer's teachings into the Pullen system. A skilled artisan would have been motivated to combine as suggested by Kauderer at paragraph [0004], in order to provide a system for creating and administering a survey. This would be beneficial to the system for evaluation of the activities or tasks within a company and to provide greater flexibility for the information. As such, updating the occupational information provides for a greater flexibility in analyzing the data and generating the needed information. However, the combination of Pullen and Kauderer, are silent with respect to including occupational titles and data measures for each of the occupational titles in the collection and wherein the updating includes either (a) adding a new occupational title and the one or more associated data measures to the collection of occupational information or (b) modifying data measures associated with an occupational title that already exists in the collection of occupational information. On the other hand, ONET discloses including occupational titles and data measures for each of the occupational titles in the collection (pages 13-15 and 56-76,

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<sup>3</sup> Examiner Notes: The survey represents the questionnaire form.

<sup>4</sup> Examiner Notes: As stated within paragraph [0028], lines 10-16; wherein "the survey presents a list of tasks performed by the employee and requests the employee to assign a rank to each of the tasks. Therefore, the task list within the survey represents the questionnaire form.

ONET) and wherein the updating includes either (a) adding a new occupational title and the one or more associated data measures to the collection of occupational information or (b) modifying data measures associated with an occupational title that already exists in the collection of occupational information (pages 48-55, ONET). Pullen, Kauderer, and ONET are analogous art because they are from the same field of endeavor of supplying occupational information. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate ONET's teachings into the Pullen and Kauderer system. A skilled artisan would have been motivated to combine in order to provide the user with information, which was more detailed and self-related to what the user desired and capable of performing.

Regarding Claim 10, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose in a computer system, a method for maintaining a collection of occupational information including descriptions of specific occupations, the method comprising:

providing end users with access to the collection of occupational information ([0030], lines 1-13, Pullen), including providing access to a questionnaire for receiving input from a user of the collection ([0032], Pullen), wherein the questionnaire is for association with a specified occupation for which information is maintained in the collection of occupational information ([0033], lines 1-6, Pullen)<sup>5</sup>, and wherein the questionnaire is a structured analysis questionnaire configured to obtain worker

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<sup>5</sup> Examiner Notes: The hospitality industry corresponds to the specified occupation.

measure information related to the required skills for the specified occupation (pages 48-55, ONET);

receiving the questionnaire from the end user ([0032], Pullen);

analyzing the information in the received questionnaire ([0035], lines 1-8, Pullen);

providing the user with results of the analysis of the questionnaire ([0068], lines 1-5, Kauderer); and

updating the collection of occupational information to include information extracted from the questionnaire ([0029], lines 22-24, Kauderer).

Regarding Claim 11, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the questionnaire is a job analysis questionnaire ([0028], lines 7-10, Kauderer).

Regarding Claim 12, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the questionnaire is a job analysis questionnaire and wherein the questionnaire is pregraded to provide default answers for the specified occupation (pages 39-47, ONET).

Regarding Claim 30, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the one or more modified data measures includes skill collection information for the associated occupation (pages 3,7,11-12, and 85, ONET).

Regarding Claim 31, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the one or more modified data measures includes industry definition information for the associated occupation (pages 14 and 87, ONET).

Regarding Claim 32, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the one or more modified data measures includes stress related work measure information for the associated occupational title (pages 36,38,and 86, ONET).

Regarding Claim 33, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the updating includes performing statistical analysis relating to the worker measure information associated with the specified occupation (pages 13 and 56-76, ONET).

Regarding Claim 34, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the questionnaire is a direct analysis questionnaire configured so that raw data from the form is in a format that facilitates direct submission to a raw data database associated with the computer system ([0007] and [0031-0033], Pullen).



Regarding Claim 35, the combination of Pullen in view of Kauderer, and further in view of ONET, disclose the method wherein the questionnaire is a job analysis questionnaire that models publicly available work desk papers used by disability determination adjudicators (pages 77-83, ONET).

### ***Response to Arguments***

10. The declaration filed on February 19, 2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Pullen and Kauderer references. Therefore, the 35 USC 103(a), rejection of claims 3,10-12, and 30-35 is maintained.

12. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Pullen and Kauderer references. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

It is unclear to the examiner how the claimed subject matter found within the independent claims relate to the description set forth about the Exhibits. For example, the examiner is unable to locate "providing a publicly available web site for users of

occupational information, wherein the publicly available web site allows the users of occupational information to access information associated with the collection of occupational information and to contribute information used to update the collection of occupational information"; "providing access to information recently contributed via the publicly available web site, wherein the recently contributed information includes information contributed using questionnaire forms provided on the publicly available web site"; and "updating the collection of occupational information based on receiving a submission of a questionnaire form accessed from the publicly available web site and at least partially completed, wherein the questionnaire form specifies one or more data measures associated with an occupation, and wherein the updating includes either (a) adding a new occupational title and the one or more associated data measures to the collection of occupational information or (b) modifying data measures associated with an occupational title that already exists in the collection of occupational information", which is recited in the independent claims. It is noted by the examiner that while the declaration and exhibits provided do not need to state the claim limitations exactly, the limitations within the claims should be fully supported and pointed out within the declaration and exhibits. As a result, examiner does not believe full support for at least the limitations within the independent claims are provided/established.

13. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of both the Pullen reference and the Kauderer reference to either a constructive reduction to practice or an actual reduction to practice.

Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. *Ex parte Hunter*, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence.

In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless conception of the invention prior to the effective date is clearly established, since diligence comes into question only after prior conception is established. *Ex parte Kantor*, 177 USPQ 455 (Bd. App. 1958).

What is meant by diligence is brought out in *Christie v. Seybold*, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See *In re Nelson*, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence must be judged on the basis of the particular facts in each case. See MPEP § 2138.06 for a detailed discussion of the diligence requirement for proving prior invention.

Under 37 CFR 1.131, the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application). Note, therefore, that only diligence before reduction to practice is a material

consideration. The "lapse of time between the completion or reduction to practice of an invention and the filing of an application thereon" is not relevant to an affidavit or declaration under 37 CFR 1.131. See *Ex parte Merz*, 75 USPQ 296 (Bd. App. 1947). Form paragraph 7.62 (reproduced in MPEP § 715) may be used to respond to a 37 CFR 1.131 affidavit where diligence is lacking.

Applicant has failed to describe and show how they were diligent between the period of September 26, 2002 until the filing of their provisional application on March 21, 2003 in order to overcome the Pullen reference (more specifically the applicant must show diligence not only on a month-to-month basis but also days within the months). Also, applicant has failed to describe and show how they were diligent between the periods of February 24, 2003 until the filing of their provisional application on March 21, 2003 in order to overcome the Kauderer reference.

***Points of Contact***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHELCIE DAYE whose telephone number is (571)272-3891. The examiner can normally be reached on M-F, 7:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on 571-272-4146080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chelcie Daye  
Patent Examiner  
Technology Center 2100  
April 30, 2008

/Apu M Mofiz/  
Supervisory Patent Examiner, Art Unit 2161